



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

237 8 Ave SE (The Burns Building) Inc. (as represented by Avison Young Property Tax Services), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

<i>K. Thompson,</i>	<i>PRESIDING OFFICER</i>
<i>H. Ang,</i>	<i>BOARD MEMBER</i>
<i>M. Bruton,</i>	<i>BOARD MEMBER</i>

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	068101591
LOCATION ADDRESS:	237 8 Av SE
FILE NUMBER:	75938
ASSESSMENT:	\$15,640,000

This complaint was heard on the 14th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- C. Hartley *Agent, Avison Young Property Tax Services*
- M. Pierson *Agent, DuCharme, McMillen & Associates Canada Ltd.*

Appeared on behalf of the Respondent:

- K. Gardiner *Assessor, City of Calgary*

Board's Decision in Respect of Procedural or Jurisdictional Matters:

[1] No procedural or jurisdictional issues were brought forward. The Board continued with the merits of the complaint.

Property Description:

[2] The subject property is a Class C office building with restaurant/retail on the main. This property is known as the Burns building, was constructed in 1913 and became a historically designated property in 1987. The property is located at 237 8 Av SE in the downtown core (DT8 sub market area).

[3] The Property consists of a seven storey office building comprised of :

- 1) Office 60,367 sf @ \$20.50 psf
- 2) Retail level 1 13,314 sf @\$16.00 psf
- 3) Storage 1,265 sf @ \$6.00 psf

The property is assessed using the income approach to value, with a 5.75% capitalization rate and a 16% vacancy allowance for the office space, 8% for retail and 2% for storage. This property is a leasehold interest and has a 60 year term land lease held by the City of Calgary. There is an exempt tenant in the building that occupies approximately 10,860 sf of the sixth floor.

Issues:

[4] The value of the property would better reflect market if it were based on a vacancy rate for the office space was 25%.

Complainant's Requested Value: \$12,860,000

Board's Decision:

- [5] The assessment is reduced to \$12,860,000.

Legislative Authority, Requirements and Considerations:

- [1] Section 460.1(2) of the Act provides that, subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in Section 460(5) that is shown on an assessment notice for property, other than property described in subsection (1)(a).

Position of the Parties**Complainant's Position:**

- [2] The Complainant contends that the subject property has seen chronic vacancy problems for the past three years, and that this has not been recognized in the assessed value. The property is in a poorly located area of the downtown core for an office property, situated four to five blocks from the main office buildings in the downtown core. It is located on the corner of Macleod Trail (north) and 8th Av, across from the Olympic Plaza and the Municipal Building. It is not connected to the DT core, but rather it is in what may be referred to as the municipal government section. In addition, the Complainant stated that this is a 1913 heritage building and as such the mechanics in the building simply don't compete with the newer office towers in the downtown core.

- [3] The Complainant included a chart with three years of leasing activity for the subject property to show consistently higher vacancy than what the City's typical 16% vacancy allowance for C Class allows [C1, pg 18].

As of	Total Rentable area	Total Vacant area	% Vacant
01 Dec 2013	75,146 sf	36,901 sf	48.00%
01 Dec 2012	74,966 sf	39,009 sf	52.00%
11 Oct 2011	72,462 sf	27,453 sf	37.89%

- [4] The subject property rent rolls for December 2012 and 2013, along with reports from Cresa and Avison Young, were provided as backup documentation to these numbers [C1, pg 19-152].

- [5] The City of Edmonton's 2014 Office-Downtown Assessment Brief along with several review board decisions were included [C1, pg 157-198]. DL 032/05 and Notice of Decision 0098 441/10 both out of Edmonton were presented at the hearing.

Respondent's Position:

- [6] The Respondent provided RealNet and an Allied Properties publication as evidence that this building was purchased in 2011 for \$13.1 million by Allied Properties REIT with full

knowledge of the vacancy in the building. This was a brokered sale and the property was 66% occupied at the time of purchase. Also noted in the sale information on RealNet was that the largest tenant was due to vacate the premises on August 31, 2012, dropping the building to 39% occupied [R1, pg 18].

[7] The Respondent provided an Allied Properties press release that projected an estimated \$30 million in renovations planned for the building, to attract Class 1 tenants. This release also stated that the re-leasing should be in place within 15 months. Several documents showing that leases were commencing in May of 2014 (a total of 8,788 sf for a 10 year term) and that lease availability was down to three units by mid 2014.

[8] The Respondent stated that the City uses typical vacancy to value properties and when the vacancy is higher than the norm it is a symptom of an underlying issue, possibly the fact that they are planning to redevelop the property.

[9] As to location, the Respondent contends that more office buildings are shifting to the east end of downtown and therefore the location is not undesirable. The Hanover building was cited as an example.

[10] The Respondent provided glossary definitions for Vacancy and Collection Loss from the International Association of Assessing Officers and pointed out that there is no reference to the term chronic vacancy [R1, pg 43].

[11] The Respondent provided a market example of a court ordered 2010 sale of 8 West that was 67% occupied at time of sale and sold for \$41,450,000 [R1, pg 47]. Two value calculations were shown using various different vacancy allowances.

- 1) Using typical vacancy the value of this property was calculated to \$34,230,000.
- 2) When using actual vacancy and used in the assessment formula the value was \$18,800,000.

[12] This same property sold in 2012 for \$65,745,000 at 88% occupied [R1, pg 51-52]. The Respondent tested the typical vs. actual vacancy allowance, using the 2014 assessment income formula, on this sale and found:

- 1) Typical vacancy calculated to \$61,700,000.
- 2) Actual vacancy calculated to \$53,460,000.

[13] The values achieved using actual vacancy in the assessment formula produce a value that is far too low [R1, pg 46-54]. The Complainant commented that for this sale, the purchaser paid for what was in the building at the time.

[14] The Respondent entered the 2014 rent roll for the subject property into evidence that showed suites #265, #301 and #420 are actually occupied. The Complainant acknowledged this and reworked the vacancy based on this information and commented that the actual vacancy was still north of 35% for 2014 [R1, pg 56-58].

[15] The Respondent presented a correct calculation for the Complainant's requested vacancy rate removing the exempt portion. The Complainant accepted this number as their revised request [R1, Pg 60].

[16] A Class C sale of the Centennial Building, with an 8% vacancy, was presented by the Respondent to show the sale rate of \$211.30 psf. The assessment with typical vacancy was at \$213.96 psf and Complainant's requested value was at \$175.95 psf [R1, pg 64-88]. The Respondent maintained that this shows the request would produce a value that is far too low. The Complainant commented that the Centennial building did not have a vacancy issue.

[17] Finally the Respondent provided eight equity comparables to show all Class C properties were treated in the same manner [R1, pg 71].

[18] Several CARB decisions were included for the Boards consideration and CARB 76655P-2014 was entered at the hearing.

Board's Reasons for Decision:

[19] The Board reviewed the evidence provided by both parties and will limit its comments to the relevant facts pertaining to this case.

[20] The subject property is in an area dominated by the municipal government building and outside of the downtown core. The subject property's rental rate was not challenged. The vacancy rate was the only concern.

[21] The Complainant provided three years of vacancy information that showed the vacancy of this property was well beyond the typical 16% vacancy for this class of property.

[22] The Board accepts that vacancy allowances for the purpose of determining an assessment value must be typical and determined from a range of vacancies taken from the properties within the class. The Board accepts the Respondent's contention that higher than typical vacancy is a symptom of an underlying issue.

[23] In looking at the underlying issues for the high vacancy on this property, the evidence showed good marketing and management of the property. The Board accepted the Complainant's contention that the age and location of this property would potentially be the cause of the higher vacancy. This property is not in a well connected office downtown location, and is surrounded by theatres, the Olympic plaza and municipal government offices.

[24] No evidence was provided as to how the typical 16% vacancy was derived for this class of buildings and therefore the Board had no evidence as to the range of actual vacancies that were used to arrive at the 16%, or whether the subject's vacancy was included in that study.

[25] The Respondent stated that the well-publicized \$30 million in renovations had an impact on the property's rental performance. However no evidence was brought forward as to how and when that performance was impacted.


[26] The Board is not going to get into a debate over the meaning of the term chronic vacancy, but it has determined, based on the evidence presented that this property has had much higher than typical vacancy for a number of years. It appears clear that the age of the building and its location plays a major factor in that. With no evidence as to the range or sample of properties included to calculate the typical vacancy in a Class C office building, the Board has to weigh in favour of the Complainant's evidence.

[27] The Board gave little weight to the Respondent's *post facto* evidence; while this may change future year's vacancy percentage, it doesn't impact the 2014 assessment.

[28] The Board notes that while it is not bound by previous Board Orders, it did consider those that were submitted but its decision is based on the evidence presented.

[29] The Board finds sufficient evidence to alter the vacancy rate applied to this property to the requested 25%.

DATED AT THE CITY OF CALGARY THIS 14th DAY OF August 2014.



K. Thompson

Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

Property Type	Property Sub-Type	Issue	Sub issue
office	High rise	Income Approach	Vacancy